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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 394

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, Trustees of the United Mine Workers of America Welfare and Retirement Fund, Petitioners

v.

ANTONIOS G. STAMPOLIS, Respondent

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND THE SUPERIOR COURT OF PENNSYLVANIA

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OCTOBER TERM, 1958

NO. 594

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, Trustees of the United Mine Workers of America Welfare and Retirement Fund, Petitioners

v.

ANTONIOS G. STAMPOLIS, Respondent

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND THE SUPERIOR COURT OF PENNSYLVANIA

Antonios G. Stampolis, respondent herein, respectfully prays that the *Petition for Writ of Certiorari to the Supreme Court of Pennsylvania and to the Superior Court of Pennsylvania*, filed by *John L. Lewis, Henry G. Schmidt and Josephine Roche, Trustees of the United Mine Workers of America Welfare and Retirement Fund*, at the above number and term of this Court, be denied.

CITATIONS TO OPINIONS BELOW

The opinion of the Superior Court of Pennsylvania is reported in 186 Pa. Super. 285, 142 A. 2d. 348. The opinion of the Superior Court of Pennsylvania and of the Common Pleas Court of Allegheny County, Pennsylvania, are printed in the Appendix A at pages 4a and 1a, respectively, of petitioners' Petition.

QUESTIONS PRESENTED

1. Is the *Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania and to the Superior Court of Pennsylvania,* filed by petitioners in this Honorable Court, premature?

2. Should state courts be denied judicial review over labor welfare and retirement funds where such states have a direct and substantial interest in such funds?

STATEMENT OF CASE

Antonios G. Stampolis, respondent herein, on September 5, 1956, caused to be issued a Writ of Foreign Attachment under the Pennsylvania Rules of Civil Procedure. Said Writ was duly served upon Pittsburgh Consolidation Coal Company as garnishee, said Coal Company stipulating that it would retain from remittances to the United Mine Workers of America Welfare and Retirement Fund $7,000.00 to be held to satisfy any judgment rendered in said action. A complaint in assumpsit was duly issued and served upon said garnishee. Petitioners, appearing specially and de bene esse, filed preliminary objections in the nature of a petition raising the question of jurisdiction. After the filing of interrogatories and cross-interrogatories, the parties stipulated some relative facts to aid the lower court. The lower court, after argument, sustained said preliminary objections and quashed the Writ of Foreign Attachment, from which respondent appealed to the Superior Court of Pennsylvania. The Superior Court of Pennsylvania sustained respondent's contention that the lower court had jurisdiction over funds attached by

the Writ of Foreign Attachment. Petitioners twice attempted to have the Superior Court's decision reviewed by the Supreme Court of Pennsylvania and failed on both attempts. Petitioners now seek to have the Supreme Court of the United States review the record below.

The United Mine Workers of America, a union, as a result of industry wide bargaining entered into the National Bituminous Coal Wage Agreement of 1950 with coal operators, wherein was created the United Mine Workers of America Welfare and Retirement Fund (Hereinafter called the Fund). The Fund was to administer certain fringe benefits, unemployment and death benefits; all pursuant to rules to be promulgated by the "Board of Trustees". Respondent, Antonios G. Stampolis, at the time of suit, was and still is a member of said union, was and still is of advanced age, 69 years of age, poor and impoverished and unable to do any remunerative work. Respondent had been continuously employed in the mining industry for thirty-nine years and upon reaching sixty-five years of age, applied for pension benefits from said Fund and the pension was denied without explanation. Respondent complied with all the rules and regulations of said Fund and provisions promulgated thereunder by the petitioners. Respondent then brought the action in the court below to compel payment of pension benefits due and owing to him.

REASONS FOR DENYING THE WRIT

1. The Petition for Writ of Certiorari to the Supreme Court of Pennsylvania and to the Superior Court of Pennsylvania, Filed by Petitioners in This Honorable Court, Is Premature.

Petitioners at number one of their REASONS FOR GRANTING THE WRIT of their petition fail to set forth any action of the courts of Pennsylvania which has denied them their property without due process of law; thus no federal question was raised.

Despite petitioners insistence that Pennsylvania courts have exercised in personam jurisdiction over them, the Pennsylvania courts have not. The record shows no judgment entered against any of the petitioners individually, collectively or as officers of the United Mine Workers of America Welfare and Retirement Fund and no judgment entered against the United Mine Workers of America Welfare and Retirement Fund (hereinafter called the Fund) as an entity. Referring to the text of Justice Ervin's opinion in the Superior Court of Pennsylvania in the present case (page 8a of petitioners' Appendix), the Justice set forth:

> ". . . We decide only that the court below had jurisdiction of the res caught by the writ of foreign attachment. We do not intend to interfere with the prerogative of the court below to determine any issues on the merits. We are unable to determine from the present pleadings what the real defense to the plaintiff's claim is. If the defendants elect to file an answer on the merits, their defenses will be revealed. Whether it is a valid defense and what law should be applied in the event there is a conflict between the forum and the situs of the trust are

questions which must be met if and when they arise."

This Honorable Court, in the celebrated case of *Pennoyer v. Neff*, 95 U.S. 714, 246 L. Ed. 565, in an opinion written by Mr. Justice Field, has set forth that where non-residents' property situated within a state is first attached, to that extent the State court can exercise jurisdiction in rem over the property attached. The decision of the Superior Court of Pennsylvania in the present case is in conformity with Mr. Justice Field's opinion and is in conformity with the opinion of Mr. Chief Justice Warren in the case cited by petitioners, *Hanson v. Denckla*, 357 U.S. 236, 246, 2 L. Ed. 2d 1283 (citing McDonald v. Mabee, 243 U.S. 90, 91).

Petitioners do not attack Pennsylvania civil procedure because it fails to duly notify non-residents of an action against them or that non-residents have no time to defend claims against them—thus resulting in a denial of their property without due process of law. Petitioners quarrel that the Pennsylvania courts have upheld a foreign attachment of their property within Pennsylvania to satisfy the claim of a Pennsylvania citizen. That the Pennsylvania courts have this right is dealt with by Mr. Justice Field in the case of *Pennoyer v. Neff*, supra, at page 723:

> ". . . So the State, through its tribunals, may subject property situated within its limits owned by non-residents to the payment of the demands of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and

appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. . . .

". . . These views are not new. They have been frequently expressed, with more or less distinctness, in opinions of eminent judges, and have been carried into adjudication in numerous cases. . . ."

Petitioners in effect would enjoin the Pennsylvania courts from entertaining the present attachment even before the basic questions going to the merits are raised and presented to the lower courts of Pennsylvania. As is set forth in the opinion of the Superior Court of Pennsylvania, all that that court had before it was the writ of attachment, the Complaint of respondent and petitioners' objections raising the question of jurisdiction. Thus, petitioners have not been denied due process of law.

Petitioners in this petition seek to raise questions going to the merits of the case which were not before the lower courts—identity of the funds attached and administration of the Fund. Petitioners contend that by upholding the attachment of funds not yet allocated by petitioners, themselves, between petitioners' general bank account and petitioners' pension bank account, the Pennsylvania courts have deprived petitioners of their property without due process of law. Certainly the simple expedient of a bookkeeping entry by petitioners, themselves, cannot change the complexion of the fund attached or result in a denial of due process in one in-

stance and not result in a denial of due process in another instance. Petitioners contend the action of the court below is administering the Fund. The courts of Pennsylvania have sustained the foreign attachment of petitioners' funds, nothing more.

Mr. Justice Field, in *Pennoyer v. Neff*, supra, specifically sets forth that it is a legitimate and just exercise of authority of a state to hold and appropriate ANY property owned by such non-resident to satisfy the claims of its citizens.

Petitioners in number two of their REASONS FOR GRANTING THE WRIT imply that Tennessee and Pennsylvania courts have expressed conflicting views upon the federal question of due process and construction of the Labor-Management Relations Act of 1947.

The Pennsylvania courts in the instant case have entered no judgment against the petitioners upon which petitioners can claim a denial of property without due process of law and they have not expressed any views of the federal question of due process of law and they have not construed the Labor-Management Relations Act of 1947 in any way, shape or form. The Tennessee courts, in the case of *Hobbs v. Lewis*, 197 Tenn. 44, 270 S.W.2n, 352, expressed no views on any federal question and has not construed the Labor-Management Relations Act of 1947. Said court erroneously granted immunity to judicial process within its boundaries to the Fund, although by so doing it deprived miners of the protection, benefits and blessings of their local courts.

At best, one might say that two courts have reached different conclusions, but this alone does not amount to

a denial of property without due process of law or raise a federal question.

The Pennsylvania courts in the instant case are not convinced by the Tennessee court's decision in the *Hobbs* case that they also should abdicate their responsibility to thousands of union welfare and pension fund beneficiaries who have worked for years to create the Fund.

Petitioners at page thirteen of their petition would have this Honorable Court set down the requirements of due process as applied to state control of trusts. Not only is such a prayer without the scope of their Petition, but it is not yet decided whether the Fund in question is an inter-vivos trust within the meaning of the word as applied in the field of trusts.

The exceedingly narrow question in this case is whether or not a state can maintain an attachment of the property of a non-resident defendant.

2. State Courts Should Not Be Denied Judicial Review Over Labor Welfare and Retirement Funds Where Such States Have a Direct and Substantial Interest in Such Funds.

Congress intended that state courts should have the right of judicial review over labor welfare and retirement funds. Congress intended that employees were to have an opportunity to enforce their rights against such trusts in state courts. Trustees were to be amenable to the courts in the same manner as other trusts. Senator Ball set forth the purpose and intent of the Labor-Management Relations Act of 1947 as being for the purpose of preventing welfare funds contributed by employers from degenerating into bribes. The Act itself,

at section 186 (c) (2), excepts payments between employers and employee representatives by reason of settlement or compromise of complaints or grievances directed by courts or arbitrators. The Act itself, at section 186 (e), limits federal court jurisdiction to injunctive relief for violation thereof, purposely allowing state courts jurisdiction over other relief, enforcement and supervision.

The Act provides that pension moneys be deposited to a pension trust account that can only be used for that purpose. Obviously, this was to prevent "raiding" of welfare pension funds and not to prevent the payment of pensions from other monies of such welfare and retirement funds. Otherwise "trustees" of such pension funds might never deposit moneys into pension accounts.

Pennsylvania is a highly industrialized state and consequently is vitally interested in labor welfare and pension plans affecting a vast number of citizens of Pennsylvania. Pennsylvania has for generations been a leader in coal production and therefore has a substantial and vital interest in the United Mine Workers of America Welfare and Retirement Fund. As indicated by the Superior Court of Pennsylvania and stipulated by petitioners, Pennsylvania coal operators have contributed a substantial portion of the Fund's $826,000,000.00.

Petitioners quite naturally are displeased with a decision of the Pennsylvania courts, which embraces that field of trust law authority that protects the interests of thousands of Pennsylvania coal miners. Justice Ervin of the Pennsylvania Superior Court (page 7a of petitioners' Appendix) set forth:

". . . There is also good authority for the principle of law that if a court has jurisdiction of the trust res, it may render a judgment in rem or quasi in rem affecting a non-resident defendant constructively summoned with reference to the res in the court's control but it may not render a judgment in personam . . . (citing Pennsylvania cases in support thereof) . . . We are impressed by the thought that thousands of miners throughout the land should also be entitled to some consideration. Surely their convenience should be considered as well as that of the trustees. The trustees in six years received over $800,000,000.00 from this source, a considerable portion of which came from Pennsylvania, and they can better afford to come here and litigate than can the miners go to Washington, D.C. to do so."

The United Mine Workers of America Welfare and Retirement Fund is not court supervised. Petitioners would have this Honorable Court codify what courts have jurisdiction over what trusts. Labor welfare and pension funds are innumerable. Each fund and plan must be examined upon its own merits and as the situation arises. Petitioners, although denying a pension to an aged miner nearly 70 years old who has worked nearly 40 years in the coal mines, speak grandly and eloquently of the great benefit labor welfare and retirement funds have brought to industry and employees and the nation and the economy and nearly everyone else. Although asked, petitioners have failed to inform the courts of Pennsylvania of the number of past denials of medical, welfare, funeral and pension benefits to Fund beneficiaries.

Justice is not a stream which flows in one direction, although petitioners would like to have it that way.

Petitioners themselves make good use of the courts within the boundaries of any one state to enforce collection of monies allegedly owing to the Fund by coal operators; but petitioners would like to deprive the impoverished coal miner of the right to stand before the bar of justice in his local court and to recover monies rightfully owing to him by the Fund, although in that very jurisdiction the Fund recovers many millions of dollars as a direct result of the labor of the miners; as Justice Ervin of the Pennsylvania Superior Court (7a of petitioners' Appendix) so well stated:

> "It should also be remembered that the miner is not a disgruntled charity patient and that this fund only came into being as a direct result of the labor of the miners. This is not pure charity upon the part of the operators but really is a quid pro quo for the miners' labor. We are inclined to believe that the equities balance in favor of the miners, who should really be considered as third party beneficiaries of the Fund . . . we are firmly convinced that greater justice will prevail in the view that we have taken."

Petitioners would like to be immune to judicial process in Pennsylvania and in every other state and when this immunity is not granted unto them they complain that their constitutional rights are violated! They say nothing about the constitutional rights of the impoverished coal miner to whom they would deny access even to his local courts—well knowing that this amounts to justice being denied him. If the petitioners were to succeed in establishing such a precedent, and thus gain immunity from judicial process in every state in the union, then based upon such a precedent there would be nothing to prevent the petitioners from endeavoring to gain immunity to the judicial process of even our federal courts.

Conclusion.

The Pennsylvania courts have determined that petitioners are more than a magnanimous charitable trust and fatherly trustees. Petitioners are officials of a non-court supervised labor welfare and retirement fund charged with administering fringe benefits resulting from collective bargaining. The Pennsylvania courts in accordance with the law of the Commonwealth of Pennsylvania and in the exercise of common sense and in the protection of respondent's constitutional rights under the Pennsylvania Constitution Article 1, Section 11 (providing that all courts shall be open and every man for an injury done him in his property shall have a remedy by due course of law and right and justice administered without sale, denial or delay) have allowed to Pennsylvania coal miners for an injury done them, a remedy by due course of law and have made provision that right and justice be administered without denial or delay.

CONCLUSION

The *Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania* should be denied.

Respectfully submitted,

D. B. TOBE and
CHARLES E. MCKISSOCK,
Attorneys for Respondent.

January 16, 1959.